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Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Written statement^{*} submitted by the Asian Legal Resource Centre, non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in
accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

^{*} This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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ASIA PACIFIC: Action required to protect human rights defenders at risk for protecting migrants' rights*

The Asia Pacific Mission for Migrants (APMM) and the Asian Legal Resource Centre (ALRC) would like to draw the attention of the Human Rights Council to the increasing trend of harassment, intimidation, and threats on human rights defenders advocating for or protecting the rights of migrants in Asia and the Pacific.

The General Assembly Resolution (A/RES/68/181, para. 6) has "recognize the valuable work of human rights defenders" and reiterates the obligations of States to promote, respect and protect those "individually and in association with others" defending human rights without distinction of any kind. In the past two decades, the number of migrants has increased internationally making labour migration a global phenomenon. The need to ensure protection of migrant's rights also gives rise to individuals and groups advocating for protection and promotion of migrants' rights.

While the APMM and the ALRC welcome the same Resolution for States to ensure "not to criminalize or meet with limitations" activities related to the promotion and protection of rights, it is a sad reality that not many States have honoured this Resolution. Human rights defenders, who are providing services, notably to undocumented migrants, end up at risk and are vulnerable to criminal prosecution.

Protection of the rights of migrants has already been defined in various international conventions, specifically the 2003 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. As of 2014, 47 states have already signed and ratified this Convention, however, many of them are the migrant's countries of origin. While sending countries enforce policies that could protect their nationals, their nationals are subject to domestic laws of their host countries.

In the Asia and Pacific region, migrant workers continue to express a growing concern about the status of protection of their human rights in their countries of destination. In the countries of destination of migrants, one of the major concerns pertains to undocumented migrants. The transnational and cross border nature of global migration thus requires intervention to ensure protection of rights, not only of migrant workers, but also for those promoting and protecting their rights at a global scale.

Undocumented migrants are migrants without proper legal documents authorizing them to stay and work in their countries of destination. Some undocumented migrants include: 1) migrants who enter the countries of destination legally but due to difficulties lose the legal permit to stay and work; 2) migrants who enter the countries of destination without legal permission; and 3) people who are victims of human trafficking.

Many destination states perceive undocumented migrants as criminal offenders violating immigration policies and laws and enact laws to ensure punishment for arrested offenders. The APMM has received and followed up on cases of human rights abuse experienced by undocumented migrants who have been arrested and placed in immigration detention centers around Asia Pacific.

Due to their status, undocumented migrants have become vulnerable to human rights violations, especially in terms of their employment. Without a legal contract, they receive salaries lower than what is prescribed by law, have no assured protection at the workplace, are made to work more than the legally prescribed number of working hours, and denied other benefits and rights. Furthermore, they cannot access public services, such as health, legal aid, and education. It is for this reason undocumented migrants seek help from human rights defenders.

We recall that the UN Declaration on Human Rights Defenders (A/RES/53/144) has, clearly, stipulated the right to "promote and to protect all human rights and fundamental freedoms for all persons in all countries of the world". However, in the context of international migration, human rights defenders who extend support services and assistance to migrants, notably undocumented migrants, have been subject to intimidation, harassment, and criminal persecution.

In the Kingdom of Saudi Arabia (KSA), for example, non-governmental organizations and private individuals providing legal advice and counselling to undocumented migrant workers work "under the radar" for fear of criminal persecution. Human rights defenders in the KSA fear going public with assistance to undocumented migrants, as governments of both countries of origin and destination may collaborate to crack down on undocumented migrants. Take, for example, the case of undocumented migrant Filipinos in the tent city of Riyadh who were arrested by Saudi police upon the request of the Philippine Embassy there.

Trade unions in some countries of destination have also faced threats from the state for including undocumented migrant workers in their roster. For instance, on many occasions, the South Korean government has launched massive crackdowns on undocumented migrants in Seoul, arresting, detaining, and eventually deporting them. Some members and leaders of migrant organizations and trade unions have reported being tailed by immigration police everywhere – at the workplace or in public areas – during this state-supported operation.

Publication and exposition of problems related to immigration and the rights of migrant workers are deemed criminal. Such was the predicament faced by the late Dr. Irene Fernandez, former director of TENAGANITA, an institution providing support to migrants (including workers, asylum seekers, refugees) in Malaysia. In 1996, Dr. Fernandez was charged by the Malaysian government for violating the Printing Presses and Publications Act upon the release of a report alleging ill-treatment of undocumented migrant workers in detention centres all around Malaysia. She was found guilty in 2003 but was acquitted five years later after she appealed to the High Court.

To provide services to undocumented migrants has been equated to the harbouring of criminals. Refuge centres or shelters for migrants in many countries of destination are usually run by government institutions or government-approved NGOs. For fear of arrest, undocumented migrants do not go to these shelters or centres but to other groups like church institutions, organizations, and even individual workers. Unfortunately, police conduct raids in these homes, arresting not only the undocumented migrants, but also owners of these homes for harbouring undocumented migrants. Also, church institutions and NGOs have experienced having immigration police cars parked or individuals in civilian clothes suspected to be immigration police hovering around near their offices.

We take note the Report of the Special Rapporteur on the situation of human rights defenders (A/HRC/28/63, para. 60, 64) that "States have primary responsibility for protecting human rights defenders" and "above all, to protect defenders by such means as adoption of legislative or regulatory measures aimed at their protection." Human rights defenders providing services to migrant workers, regardless of their condition of stay, should be allowed to operate without being subject to persecution.

The APMM and ALRC urge the States that, in the process of implementation of immigration policies, there must be a clear distinction between those they allege to have committed violation to immigration laws and those who are providing basic humanitarian and legal services to undocumented migrant workers. Human rights defenders must not be forced to discriminate in providing services to migrants. The APMM and ALRC are deeply concerned about the growing trend of harassment, intimidation, and other related problems arising from their role to promote and protect migrants' rights.

We urge the Human Rights Council to pay attention to this phenomenon. The HRC, through the Special Rapporteur on Human Rights Defenders, should look into situations of human rights defenders in countries of destination that have

existing policies criminalizing undocumented migrants and previous record in arrest, detention, and deportation of undocumented migrants.

We urge the governments of the countries of destination to ensure and strengthen protection for human rights defenders who provide support to and promote the rights and welfare of migrants.

Lastly, we urge the governments of the countries of destination to sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as a step towards uplifting the lives of migrants everywhere.

* Asia Pacific Mission for Migrants, NGO without consultative status also shares the views expressed in this statement.